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DATE FILED: April 16, 2009

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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DIMAS CUADRADO,

Plaintiff,

- against -

NEW YORK CITY DEPARTMENT OF CORRECTION,  
et al.,

Defendants.  
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: 08 Civ. 3026 (PAC) (THK)  
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: ORDER  
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HONORABLE PAUL A. CROTTY, United States District Judge:

Pro se Plaintiff Dimas Cuadrado (“Cuadrado”) brings this action against Defendants New York City Department of Correction (the “DOC”) and Correction Officer J. Serrano (“Officer Serrano”) pursuant to 42 U.S.C. § 1983. Cuadrado alleges that Officer Serrano used excessive force against him in violation of his civil rights.

The Court referred this matter to Magistrate Judge Theodore Katz on April 2, 2008. On August 27, 2008, Magistrate Judge Katz notified Cuadrado that the DOC was not a suable entity and would be dismissed as a defendant unless Cuadrado provided legal authority to the contrary by September 15, 2008. In a letter dated September 10, 2008, Cuadrado conceded that the DOC was not a suable entity but suggested that the DOC might still be held vicariously liable for Officer Serrano’s actions.

On November 5, 2008, Magistrate Judge Katz issued a Report & Recommendation (“R&R”) recommending that Cuadrado’s Complaint be dismissed against the DOC. In accordance with 28 U.S.C. § 636(b)(1) and Rule 72(b), Magistrate Judge Katz provided ten days from the date of service of the R&R for written objections and specifically advised

that “[f]ailure to file objections within ten days will result in a waiver of those objections for purposes of appeal.” (R&R at 3.) Cuadrado has not filed any objections to the R&R.

“To accept the report and recommendation of a magistrate, to which no timely objection has been made, a district court need only satisfy itself that there is no clear error on the face of the record.” Wilds v. United Parcel Serv., 262 F. Supp. 2d 163, 169 (S.D.N.Y. 2003). The Court finds no error in Magistrate Judge Katz’s R&R and therefore adopts its findings as its own. New York City agencies, including the DOC, are not suable entities. See N.Y. City Charter Ch. 17 § 396 (2004) (“[a]ll actions and proceedings for the recovery of penalties for the violation of any law shall be brought in the name of the City of New York and not in that of any agency, except where otherwise provided by law.”); see also Marcello v. Dep’t of Corr., No. 07 Civ. 9665 (NRB), 2008 WL 2951917, at \*4 (S.D.N.Y. July 30, 2008); Echevarria v. Dep’t of Corr. Servs. of N.Y. City, 48 F. Supp. 2d 388, 391 (S.D.N.Y. 1999).


Moreover, the Court agrees with Magistrate Judge Katz that the City of New York (the “City”) cannot be held liable under § 1983 for Officer Serrano’s actions because: (1) Cuadrado does not allege a plausible claim that any excessive force used against him was the result of a municipal policy or practice; and (2) the City cannot be held liable merely on a theory of respondeat superior. Monell v. City of New York Dep’t of Social Servs., 436 U.S. 658, 691 (1978).

For the foregoing reasons, Cuadrado’s Complaint is DISMISSED against the DOC. Pursuant to 28 U.S.C. § 1915(a), I find that any appeal from this Order would not be taken in good faith. The Clerk of the Court is directed to terminate this matter as to the DOC.

The Court's April 2, 2008 referral to Magistrate Judge Katz remains in effect for any further pretrial matters.

Dated: New York, New York  
April 16, 2009

SO ORDERED

  
PAUL A. CROTTY  
United States District Judge

Copies mailed to:

Hon. Theodore H. Katz  
United States Magistrate Judge

Dimas Cuadrado (241-07-06215)  
15-15 Hazen Street  
East Elmhurst, NY 11320

Katherine E. Smith  
Assistant Corporation Counsel  
The City of New York Law Department  
100 Church Street  
New York, NY 10007

Bran Caley Noonan, Esq.  
Attorney for Defendant J. Serrano  
Koehler & Isaacs, LLP  
61 Broadway  
New York, NY 10006